

Terry



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Anderson-Elerding Travel Service, Inc.

File: B-238527.3

Date: December 19, 1990

Mark Pestronk, Esq., Pestronk & Associates, for the protester. Christy L. Gherlein, Esq., Assistant General Counsel, Personal Property Division, General Services Administration, for the agency.

Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In a procurement for travel services, agency had reasonable basis to downgrade protester's proposal for not offering an operational facility in a mandatory location where the solicitation provided that offerors who would be able to satisfy government's requirements immediately upon award would be assessed more favorably.

2. In evaluating proposals received under request for proposals for government travel services, it was proper to assess more favorably an offer which demonstrated that it had corporate sales accounting for 85 percent of its total sales, and which exceeded the estimated government volume by almost five times, than an offer demonstrating that it had corporate sales accounting for only 50 percent of its total sales, and which exceeded the government volume by less than two times, where solicitation stated that firms demonstrating significant corporate sales would be assessed more favorably.

DECISION

Anderson-Elerding Travel Service, Inc. protests the award of a contract to Topp Travel, Inc. under request for proposals (RFP) No. 7FXI-X5-89-S012-N, issued by the General Services Administration (GSA) for the establishment and operation of Travel Management Centers (TMCs) for the state of Montana. Anderson alleges that the award of the contract was arbitrary and capricious and lacked a reasonable basis.

We deny the protest.

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The RFP, issued September 29, 1989, and having an amended closing date of November 14, solicited proposals for TMCs in five states. Only the requirement for centers in the state of Montana, however, is herein at issue. The RFP requires that for the state of Montana, offerors provide, at a minimum, full service facilities in Billings and Missoula. The solicitation contemplates a 1-year, no-cost, requirements contract, with four 1-year options. Compensation to the contractor is limited to those commissions/fees paid from the commercial travel industry.

Section M of the solicitation provides that award will be made to the responsible offeror whose offer conforms to the RFP and is most advantageous to the government, using a "total point concept." The following evaluation criteria were listed in the RFP: project management; offeror's qualifications; equipment capability; personnel qualifications; and rebates/fees. The solicitation provides that the project management and offeror's qualifications sections are equally important, followed by the remaining criteria, in descending order of importance. Proposals were evaluated based on the above factors being rated technically acceptable or unacceptable, and if acceptable, then assigning enhancement points under each criterion according to a pre-established scale not disclosed to offerors.

Initial proposals were evaluated by the Source Selection Evaluation Board (SSEB), and based upon its recommendation, the contracting officer made a competitive range determination. Discussions were conducted with all such offerors and each was requested to submit a best and final offer (BAFO) by March 5, 1990; each BAFO was subsequently reevaluated by the SSEB. Award of the contract was postponed due to a protest filed in our Office by an offeror that had been eliminated from the competitive range. This protest subsequently was denied in part and dismissed in part. Cook Travel, B-238527, June 13, 1990, 90-1 CPD ¶ 571.

In view of the time which had elapsed as a result of Cook's protest, GSA reopened discussions and requested another round of BAFOs. As a result of the subsequent evaluation of these BAFOs, Topp Travel received the highest point score, and was awarded the contract.

Anderson then requested and received a debriefing in which it was informed by the contracting officer that its proposal contained no weaknesses and was technically acceptable, but that there were areas where its proposal did not receive all of the consideration available, in other words, all of the enhancement points. The contracting officer identified two specific categories where Anderson's proposal was weaker than that of Topp Travel: (1) Anderson did not have an already

operational, full service facility in Missoula; and (2) the percentage of Anderson's commercial sales to total sales, and the ratio of commercial sales to estimated government sales (business mix), were significantly lower than those of Topp Travel.

Anderson challenges the contracting officer's determination on the grounds that Anderson did have a full service facility in Missoula which could be operational upon award of the contract, and that its business mix was sufficiently high to warrant the maximum points allotted for this criterion. 1/

The evaluation of technical proposals and the determination of their relative desirability is primarily a function of the procuring agency, since it is the agency that is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Dimensions Travel Co., B-224214, Jan. 13, 1987, 87-1 CPD ¶ 52. As a result, our Office will not make an independent determination of the relative merits of proposals, but will examine the agency's evaluation to ensure that it was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Travel Centre, B-236061.2, Jan. 4, 1990, 90-1 CPD ¶ 11. The fact that the protester disagrees with the agency's conclusions does not itself establish that the agency acted unreasonably. Id. Here, we do not believe that the agency exercised its judgment unreasonably in downgrading Anderson's proposal, since it did not have an open and operating facility in Missoula and had a business mix ratio that was lower than that of Topp Travel.

Anderson contends that to downgrade its proposal because it did not have an office in Missoula that was already open and operating is "utterly arbitrary and capricious," since its proposal stated that Anderson had secured space, equipment and personnel for a Missoula office, and that it would be fully

1/ By a letter dated September 5, Anderson supplemented its protest, challenging the award to Topp Travel on the grounds that the individual named by the awardee as the full time site manager in its Helena office works on a part-time basis, and as such, does not fulfill the RFP requirements. There is no evidence in the record to support this assertion and, since Anderson did not address this allegation in its comments on the agency report, we deem the protester to have abandoned this ground. Engineered Air Sys., Inc., B-236932, Jan. 19, 1990, 90-1 CPD ¶ 75.

operational within 30 days of award.^{2/} Anderson alleges that Topp Travel also did not have open and operating facilities in all seven locations it proposed, but also only had space and personnel ready to perform. The protester argues that even if Topp Travel does have open facilities in all locations, "to make this distinction between the awardee's capabilities and the protester's capabilities is to employ an undisclosed evaluation criterion, as nothing in the RFP expressed or even implied such a distinction." We disagree.

Section M of the solicitation provides that:

"[o]fferor's facilities will be evaluated on the basis of how the location, hours of service, number of offices, and delivery plans relate to the level of service provided the Government . . . Offerors which can satisfy the Government's requirement immediately upon contract award will be assessed more favorably than those requiring major expansion to undertake the Government account." (Emphasis added.)

The agency conducted site visits of each proposed office to confirm that each facility was both operational and capable of providing a high level of service, and to assess whether service could begin immediately upon award. As part of this site visit, the agency intended to observe the operation of the automated reservation, ticket and management reporting capabilities. Since the seven centers proposed by Topp Travel were open and operating, the agency could observe these capabilities, and it determined they met the government's needs. On the other hand, although Anderson proposed the use of four offices, the Missoula office was not yet open and operating. Anderson had only made arrangements to lease office space at that location and the components of its automated system for that office were still in boxes. Consequently, the agency could not determine whether this facility would satisfy the government's needs. As a result of this site visit, and the statements in Anderson's proposal that it would take 30 days to set up the automated computer system and to receive accreditation for the branch office, we think the agency reasonably determined that Anderson would not be able to immediately satisfy the government's needs, and reasonably awarded Topp Travel more enhancement points for

^{2/} Anderson's proposal stated that the equipment would be completely installed 30 days after award and that the Missoula location should receive the required accreditation in that time as well.

this category, since all the offices proposed by Topp Travel were fully operational. 3/

Anderson also challenges the agency's determination to award Topp Travel additional points because of the latter's higher percentage of commercial to leisure business volume, arguing that such an evaluation is irrational and is based on criteria not disclosed in the RFP. The protester contends that this is an irrational basis upon which "to make awards because there is a percentage at which the agency's [firm's] corporate sales become enough and should entitle it to maximum points."

The RFP specifically provides that:

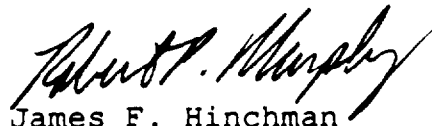
"since the Government requires corporate travel services only, the firm's proportion of commercial-type sales (including previous Government) will be assessed relative to its total sales and the Government's requirements. Firms which thereby demonstrate significant corporate orientation will be assessed more favorably for this factor."
(Emphasis added.)

Topp Travel's proposal demonstrated that 85 percent of its total sales were commercial, and that its commercial sales exceeded the estimated government volume by almost five times. Anderson's proposal, on the other hand, demonstrated that only 50 percent of its total sales were commercial, and that these commercial sales exceeded the government's estimated volume by less than two times. We believe that GSA's conclusion that Topp Travel's 85 percent commercial-type sales demonstrate more significant corporate orientation than Anderson's

3/ In its comments on the agency report, Anderson argued, for the first time, that it is the incumbent performing a higher percentage of the agency's requirements for this area than is Topp Travel, and so it does not need to expand as much as does Topp Travel to absorb the additional workload. There is no evidence that Topp Travel, a larger firm, will have to undergo major expansion to fulfill the agency's needs, and in any event, this allegation is untimely under our Bid Protest Regulations. A protest must be filed within 10 working days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1990). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the latter raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. EER Sys. Corp., 69 Comp. Gen. 207 (1990), 90-1 CPD ¶ 123.

50 percent, and is worth more enhancement points, was both reasonable and consistent with the evaluation criteria set forth in the RFP. 4/

Since we have determined that the agency exercised its judgment reasonably in evaluating the proposals of Topp Travel and Anderson, we deny the protest.


for James F. Hinchman
General Counsel

4/ Although Anderson also alleged that the agency failed to award extra points to Anderson for enhancements contained in its proposal, including its higher rebate, as was provided for in the solicitation, our review of the score sheets of the technical evaluators demonstrates, that in fact, Anderson received more points than did Topp Travel because of Anderson's higher rebate, and Anderson also received the appropriate amount of points for its other enhancements.